

## WETLANDS COUNCIL

### MINUTES

October 11, 2011

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The Wetlands Council met on Tuesday, October 11, 2011 in Rooms 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

**Attendees:** Chairman Chip Kimball, Councilors: Larry Ballin, Ryan Crosbie, Carol Henderson, James Kennedy, Russ St. Pierre, Thomas Sloan, and David Thompson

**Absentees:** Councilors: Sharon Champagne and Seth Prescott

Also present were: Paula Scott, Appeals Clerk and Carolyn Guerdet, Council Clerk.

The regular Wetlands Council meeting was called to order by Chairman Kimball at 9:00 a.m. with introductions and a quorum present.

#### 1. Approval of Minutes

- ***Councilor Henderson made a motion to approve the September 13, 2011 minutes as drafted, second by Councilor Crosbie. Motion passed unanimously.***

#### 4. New Business

ARM Fund Report – Lori Sommers, Mitigation Coordinator, Wetlands Bureau  
The Winnepesaukee and Upper Connecticut Watersheds were advertised for the ARM Fund. Recommendations will be presented at the next council meeting. She has been working this past year on a draft in-lieu fee instrument. EPA has issued a federal mitigation rule that all states must be in compliance with. One program change includes issuing a release of funds just once a year. In March is the announcement for pre-proposals, which will be due in April and a final submitted in August. The Wetlands Council will then see the recommendations in November. Another change will be modifying the watersheds – 9 regions instead of 16, which will require a statute change.

Soon a fiscal year legislative report will be sent to the Council of the ARM Fund activity. It includes what projects utilized the funds, where, administrative funds generated and costs. The administrative percentage was been changed from 20% down to 10% and in 2015 will be back to 20%.

#### 2. Status of Appeals

Paula Scott, Appeals Clerk, reviewed the following appeals:

<b>I. New Appeals</b>
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##### **Docket No. 10-29 WtC – Constance Klefos Trust**

Subject: 7/14/10 Denial of Request for Reconsideration of issued permit

Presiding Officer: James Kennedy or David Connelly to be assigned

Status: Insufficient Appeal-letter sent September 8, 2011. Received revised appeal on 10/7/11.

Council needs to accept to deny appeal.

- ***Councilor St. Pierre made a motion to accept the appeal, second by Councilor Thompson. Motion passed unanimously.***

**Docket No. 11-11 WtC – Robert M. Pinato**

Subject: 8/30/11 Rescission of Administrative Order No. 10-025 WD

Presiding Officer:

Action needed: Appeal filed timely on 9/29/11. Received Motion to Summarily Dismiss Petition on 10/5/11. Council to act on Appeal and Motion at the November 8, 2011 Council meeting.

**II. Decision and Orders that need to be written, finalized and issued.**

**Docket No.: 07-03 WtC – James Watson**

Subject: 1/18/07 Decision on Reconsideration Denial Wetlands File No. 2006-01302

Presiding Officer (PO): To be assigned.

Action needed: Per Nov. 13, 2007 Council Meeting Minutes "Permit has been issued. A Motion to Dismiss will be filed". September 19, 2011 Appeals Clerk requested DES to file Motion to Dismiss. October 7, 2011 received Motion to Dismiss.

- ***Councilor Sloan made a motion to accept the Motion to Dismiss, second by Councilor Ballin. Motion passed unanimously.***

**Docket No.: 07-23 WtC – Steve Bragg**

Subject: 08/09/07 Decision on Reconsideration Denial Wetlands File No. 2006-01494

Presiding Officer: Larry Morse

Action needed: Settlement was reached; Council needs to dismiss. On September 19, 2011, Appeals Clerk contacted appellant's representative and requested he withdraw this appeal. October 5, 2011 Appeal was withdrawn.

**Docket No.: 08-04 WtC - Porter Trust**

Subject: 12/12/07 Decision on Reconsideration, Wetlands File No. 2006-02705

Presiding Officer: Chip Kimball (assigned by AGO on January 5, 2011)

Status: On June 14, 2011, Council voted to deny LBC's Motion to Dismiss. Council also voted to continue deliberations until 60 days after reconsideration of issuance of new permit (permit issued on 4/6/11). Decision and order sent on 7/14/2011. Council may consider Motion for Summary Judgment. A letter to request status will be sent.

**Docket No.: 09-07 WtC and 09-08 WtC - Lake Sunapee Protective Association (LSPA) and Town of Newbury**

Subject: 1/7/09 Shoreland Impact Permit issued by DES to the NH Fish and Game for the Wild Goose Site in Newbury.

Presiding Officer: Larry Morse (assigned by AGO)

Recused: Larry Ballin, Carol Henderson

Status/Action: Hearings were held on October 12, 2010; October 26, 2010; November 9, 2010; and December 14, 2010. Deliberations were held on March 8 and April 12, 2011. Decision and order to be prepared with 90 days (July 11<sup>th</sup>).

**Docket No.: 09-35 WtC – Town of Newbury**

Subject: 9/18/09 Decision on Reconsideration, Wetlands File No. 2008-02781

Presiding Officer: Larry Morse (assigned by AGO)

Recused: Larry Ballin, Carol Henderson

Status/Action: Deliberations held on June 14, 2011. Decision and order to be prepared with 90 days (Sept. 12<sup>th</sup>).

**Docket No. 09-44 WtC – Thomas and Joan DiPace**

Subject: 10/13/09 Administrative Order No. 09-082 WD

Presiding Officer: Chip Kimball (assigned by AGO on October 27, 2010)

Status/Action: Hearing was held on 9/13/11 at 9 a.m. Draft Order and Decision to be adopted by Council.

- ***Councilor Henderson made a motion to accept the Order, second by Councilor Sloan. Motion passed unanimously.***

**Docket No. 10-01 WtC – Julie and Earle Jenkins**

Subject: 10/26/09 amended permit

Presiding Officer: Larry Ballin

Recused: Chip Kimball

Status/Action: Decision and Order was accepted by the Council on September 13, 2011. Decision was mailed September 13, 2011.

**Docket No. 10-03 WtC – Richard and Donna Mills Appeal**

Subject: 1/5/10 Decision on Reconsideration, Wetlands File No. 2009-01534

Presiding Officer: Chip Kimball (assigned by AGO on January 26, 2011)

Status: Decision and Order adopted at the September 13, 2011 meeting. Order mailed on 9/14/11.

<b>III. Hearings or PHCs Pending</b>
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**Docket No.: 07-09 WtC - Derry Conservation Commission**

Subject: 4/24/07 Decision on Reconsideration Denial, Wetlands File No. 2006-00773

Presiding Officer: Seth Prescott (assigned by AGO)

Status: PHC was held on July 27, 2011, at 1:00 pm. Hearing scheduled for Dec. 13, 2011 at 10 a.m. per Pre-Hearing Order (PHO) issued on 8/8/11. Received witness & exhibit list from Applicant on 9/30/11. Received Motion to Expand and Objection to Motion- these will be ruled on by PO Prescott.

**Docket No.: 08-53 WtC - Vintage Trust c/o Enthusiasts, Inc.**

Subject: 8/7/08 Decision on Reconsideration Denial, Wetlands File No. 2006-01506

Presiding Officer: Ryan Crosby

Status: Hearing scheduled for Oct 18, 2011 at 9 a.m. per PHO issued July 20, 2011. Assented-To Motion to Continue was filed on September 16, 2011. PO granted Motion to Continue for 60 days on September 30, 2011. Will set a hearing date for February 28, 2011.

**Docket No.: 08-55 WtC - Tracy Middleton Revocable Trust of 1992**

Subject: 9/12/08 Reconsideration Denial, Wetlands File No. 2002-2087

Presiding Officer: Chip Kimball (assigned by AG on 8/1/11)

Status: A PHC was scheduled for July 27, 2011, at 10:00 am. Notice was issued on June 27, 2011. Motion to Continue for 30 days was received and granted on 7/21/11. Notice was issued on July 22, 2011. A PHC rescheduled for October 26 at 10:00 a.m. Sent notice on September 20, 2011.

**Docket No.: 09-20 WtC - Dana Belletete**

Subject: 3/26/09 Request for Reconsideration Denial, Wetlands File No. 2009-00366

Presiding Officer: Chip Kimball

Status: The permit at issue was issued subsequent to the filing of the appeal. Therefore, it appears that the appeal is moot and should be withdrawn. The appellant has stated to the Wetlands Bureau that he filed an appeal of an AO arising from construction related to the appeal. There is no record of a

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subsequent appeal on the AO. PHO issued and mailed July 27, 2011. No Hearing scheduled, Motion to Dismiss was received August 22, 2011 (did not note this on Sept. 13<sup>th</sup> Status Report).

- ***Councilor Henderson made a motion to Dismiss, second by Councilor Thompson. Motion passed unanimously.***

**Docket No.: 09-25 WtC - Town of Hooksett**

Subject: 5/11/09 Wetlands and Non-Site Specific Permit, Permit No. 2008-02016

Presiding Officer: Chip Kimball (assigned by AGO on October 27, 2010)

Recused: Larry Morse

Status: A hearing was scheduled for August 23, 2011 at 9:00 a.m. Notice was issued on July 21, 2011. Motion to Continue hearing was received on July 29, 2011. Motion Granted and issued on August 4, 2011. Rescheduled hearing for October 25, 2011 at 9 a.m., notice issued September 23, 2011.

**Docket No. 09-36 WtC – Brendan and Dana Keegan**

Subject: Administrative Order No. 09-22 WD dated April 6, 2009

Presiding Officer: David Thompson/Chip Kimball

Status: A PHC was held on 6/24/2010. Another PHC was scheduled for April 27, 2011 at 12:00 p.m. No indication as to whether PHC occurred. Notes in file reference a 60-day stay, but there is no order granting stay. Settlement discussions ongoing but appear to have stalled b/c petitioner is waiting on info from program. Sent status request with 30 days to respond on July 18, 2011. Received DES' status update on 8/22/11. DES requests a PHC be scheduled after Sept. 2011. Paula spoke with Dave on 9/22, he said he thought there was someone to take his place on the Council but it would take a few months. However, if he is still on the Council he is available for 10/25 or 11/23 in order to schedule a PHC. Per DES we actually need to schedule a hearing, as PHC was already held. We will need a new Presiding Officer. Council Attorney will be contacted regarding the change of POs. A hearing will be scheduled for February 28, 2012 at 9 a.m. A PHC will be set up for November 28, 2011.

**Docket No. 10-04 WtC – Thomas J. Murray Appeal**

Subject: 12/28/09 Denial of Application, Wetlands File No. 2007-00187

Presiding Officer: Chip Kimball (assigned by AGO on October 27, 2010)

Status: The hearing is rescheduled for January 24, 2012 at 9 a.m., notice sent September 21, 2011.

**Docket No. 10-08 WtC – Robert Reich**

Subject: 4/19/10 Decision on Reconsideration, Wetlands File No. 2009-02050

Presiding Officer: Chip Kimball (assigned by AGO on January 26, 2011)

Status: PO granted Assented-to Motion to Continue. New Hearing date is Oct. 11, 2011 at 10 a.m. Notice issued July 22, 2011. Hearing is today.

**Docket No. 10-10 WtC – Donald Lee**

Subject: 5/23/10 Decision on Reconsideration, Wetlands File No. 2008-01253

Presiding Officer: Chip Kimball (assigned by AGO on January 26, 2011)

Status: Hearing scheduled for Jan. 10, 2012 per notice of PHO issued on 8/31/11.

**Docket No. 10-12 WtC – Provencal One Family Trust**

Subject: 6/4/10 Administrative Order No. 10-013 WD

Presiding Officer: Chip Kimball (assigned by AGO on January 26, 2011)

Status: A hearing was scheduled for June 28, 2011 at 8:00 a.m. The PO granted Appellant's Assented-to Motion to Continue. Hearing was rescheduled to September 27, 2011 at 9:00 a.m. Notice issued July 22<sup>nd</sup>. Appeal was withdrawn on September 22, 2011.

**Docket No. 10-14 WtC – Akwa Marina Yacht Club**

Subject: 6/11/10 Decision on Reconsideration, Wetlands File No. 2009-01047

Presiding Officer: Chip Kimball (assigned by AGO on January 26, 2011) Recused himself from being PO, Larry Ballin was assigned 8/19/11.

Status: PHO issued on July 27, 2011, hearing scheduled for Nov. 8, 2011 at 9 a.m.

**Docket No. 10-20 WtC – Robert Pinato**

Subject: August 19, 2010 Administrative Order, Administrative Order No. 10-025 WD

Presiding Officer: Ryan Crosbie

Status: A hearing is scheduled for October 25, 2011, at 9:00 am. Amendment to Petition for Appeal rec'd June 30, 2011. Motion to Continue was filed 8/29/11. Objection to Motion to Continue was filed 8/30/11. Reply to Objection to Motion to Continue filed 9/1/11. Motion to Dismiss was filed on Sept. 13, 2011. PO to issue decision and order on Motion to Dismiss. Ruling on Motion to Dismiss was issued Sept. 28<sup>th</sup> – Motion was granted. Received Motion for Reconsideration on 9/29/11. Objection to Motion for Reconsideration was filed on 10/5/11. Council/PO to act on Motion and Objection. Councilor Crosbie is discussing with Attorney English.

**Docket No. 10-23 WtC – Charles and Patricia Sem**

Subject: Administrative Order No. 10-033 WD dated September 21, 2010

Presiding Officer: Ryan Crosbie

Status: PHC rescheduled to Sept 21, 2011 at 9:00 a.m. Notice sent August 4, 2011. 9/21/11 received appearance notice from Linda Magoon for DES. Hearing is scheduled for March 13, 2012 at 9 a.m. per PHO issued on September 21, 2011.

**Docket No. 11-03 WtC – Joseph and Patricia DeVelis**

Subject: 1/25/11 Administrative Order No. 11-002 WD

Presiding Officer: Ryan Crosbie (assigned by AGO on May 2, 2011)

Status: PHO issued 8/1/11 with Hearing scheduled for November 22, 2011 at 9:00 a.m.

**Docket No. 11-06 WtC – John and Sharon Graham**

Subject: April 11, 2011 Appeal of Administrative Order No. 11-014 WD

Presiding Officer: Larry Ballin (assigned by AG on 8/1/11)

Status: Council accepted the appeal letter, notice was sent on July 22, 2011. PHC scheduled for November 7, 2011 at 9 a.m.

**Docket No. 11-07 WtC – Clinton and Cynthia Johnson**

Subject: 4/27/11 Shoreland Impact Permit No. 2011-00115

Presiding Officer: Chip Kimball (assigned by AG on 8/1/11)

Status: Council accepted the appeal. The applicant filed a Motion to Strike portions of the petition on July 8. The Appellant submitted a Response to Motion to strike via email on July 11, 2011. Appeal accepted and applicant granted intervener status, letter was sent on July 22, 2011. PHC scheduled for Sept. 20, 2011 at 9 a.m., notice sent Aug. 8, 2011. PHC was held and PHO was issued on September 20, 2011. Hearing scheduled for February 14, 2012 at 9 a.m., notice given with PHO.

**Docket No. 11-09 WtC – Thomas Morrissey and Margaret Russell, et al**

Subject: 1/1/11 Wetlands Permit #2009-01574, Town of Lyme

Presiding Officer: Chip Kimball (Assigned by AG on 9/16/11)

Recused: James Kennedy

Status: Council accepted Appeal on Sept. 13, 2011, letter issued Sept. 22, 2011. 9/27/11 Ruling was issued on Request to stay, which was mailed on 9/28/11. PHC scheduled for 10/26/11 at 11 a.m., notice issued on 9/29/11.

#### **IV. Inactive/Status Letter or Pending Settlement/Withdrawal**

**Docket No.: 09-01 WtC - Kevin Price d/b/a Ossipee Lake Marina**

Subject: 12/9/08 Administrative Order

Presiding Officer: Larry Morse (assigned by AGO on October 27, 2010)

Status: The appeal has been tentatively withdrawn, by letter dated March 7, 2011, pending completion of a settlement agreement between the parties. Status request issued 7/15/11 w/ 30 days to respond. Rec'd Status report 8/11/11-within 30 days parties will execute formal settlement and file with the Council. Paula has a call into the appellant's attorney to see where they are with the settlement. Received email from Attorney Roth, they are still working on a settlement agreement and we should be able to close this appeal within 2 to 3 weeks.

**Docket No.: 09-21 WtC - John Penaskovic**

Subject: 4/17/09 Administrative Order, Administrative Order No. 09-041 WD

Recused: Larry Morse

Status: Appeal has been stayed until the agreement of July 1, 2010 is complete. Status request letter to be sent in September 2011. Received status report on 10/3/11. Appellant wants this appeal to remain open until "Gary Goodspeed completes his portion of the work agreed upon in the restoration plan agreement dated July 1, 2010." John will withdraw this appeal when Mr. Goodspeed receives a letter of compliance and a release of recordation.

**Docket No.: 09-22 WtC - John Penaskovic**

Subject: 4/17/09 Administrative Order, Administrative Order No. 09-040 WD

Recused: Larry Morse

Status: Appeal has been stayed until the agreement of July 1, 2010 is complete. Status: Appeal has been stayed until the agreement of July 1, 2010 is complete. Appellant withdrew this appeal by letter dated September 12, 2011.

**Docket No. 10-15 WtC – Steven and Mary Pruchansky**

Subject: 6/10/10 Decision on Reconsideration, Wetlands File No. 2009-023600

Presiding Officer: Chip Kimball (assigned by AGO on January 26, 2011)

Status: A PHC was held on February 23, 2011 at 9:00 a.m. The permit has been issued and the agent will withdraw the appeal once a settlement agreement is completed. Status request sent dismissal was issued on 7/18/11. Rec'd response from DES 8/18/11 via email, this has been settled and permit issued. Notice appeal has been summarily dismissed was issued 10/4/11.

#### **V. Misc.**

**3/31/09 Request for Declaratory Ruling filed by Mr. Goodwin**

Chairman Kimball has completed a letter to the Commissioner regarding request.

- ***Councilor Ballin made a motion to send the letter, second by Councilor Crosbie. Motion passed unanimously.***

**Docket No. 08 – 20 WtC - Anthony Pivaro**

Subject: 02/19/08 Administrative Order No. 08-007 WD

Status: The appeal (received in April 2008) was not timely filed (should have received it by March 20, 2008.) Council never accepted or denied the appeal; the department has taken no action on this case.

- ***Councilor Crosbie made a motion made to deny as untimely filed, second by Councilor Henderson. Motion passed unanimously.***

5. **Old Business** - None

5. **New Business** -

a. Election of Officers – Vice Chair

- ***Councilor Ballin nominated Councilor Crosbie as Vice Chairman. second by Councilor Henderson. Motion passed unanimously.***

Commissioner Burack has asked for a meeting of all council chairs and vice chairs for October 21, 2011. Chairman Kimball and Vice Chair Crosbie will attend.

7. **Next Meeting** –

Next regular meeting will be Tuesday, November 8, 2011 beginning at 8 a.m. with the Akwa Marina Yacht Club Appeal Hearing at 9 a.m. The Town of Hooksett hearing is on October 25, 2011 at 9 a.m.

8. **Adjournment**

- ***Councilor Thompson made a motion to adjourn, second by Councilor Ballin. Motion passed unanimously.***

Meeting adjourned at 9:58 a.m.

